



California Fair Political Practices Commission

August 9, 1988

Rebecca A. Nieto
XECORP
399 Haas Avenue
San Leandro, CA 94577

Re: Your Request for Informal
Assistance
Our File No. I-88-252

Dear Ms. Nieto:

You have requested advice concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/} to your duties as consultant to the Hispanic Legislative Caucus. Your letter states only a general question; it does not request advice concerning a specific pending decision. Therefore, we consider your letter to be a request for informal assistance pursuant to Regulation 18329(c).^{2/}

QUESTION

You have recently accepted part-time employment as consultant to the Hispanic Legislative Caucus. In addition you are an owner and the chief executive officer of XECORP, which provides fundraising services for elected officials and nonprofit corporations. What duties are imposed on you by the conflict-of-interest provisions of the Act as a result of your ownership of and position with XECORP?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSION

Under the Act, you are required to disqualify yourself from participating in any decision as consultant to the Hispanic Legislative Caucus which will foreseeably and materially affect XECORP or a client of XECORP, unless the effect of the decision will be substantially the same as the effect on the public generally.

FACTS

You and your husband are owners of XECORP. You also are the chief executive officer of XECORP. Recently, you accepted part-time employment with the State Assembly as consultant to the Hispanic Legislative Caucus. You plan to continue your employment with XECORP part time while working for the Hispanic Legislative Caucus.

XECORP provides fundraising services to a number of elected officials and nonprofit corporations. These services include grant writing for nonprofit organizations, counseling nonprofit organizations regarding fundraising from individual donors, assistance in the organization of nonprofit corporations, and political fundraising for elected officials.

As consultant to the Hispanic Legislative Caucus, you will organize an advisory group of Hispanic organizations throughout the state. This advisory group will provide suggestions concerning potential legislation of interest to Hispanics. You also will assist the caucus if its members decide to organize a nonprofit corporation independent from the Legislature to promote nonpartisan programs and activities for the benefit of Hispanics. You also will perform various administrative and liaison duties for the caucus.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using her official position to influence a governmental decision in which she knows or has reason to know she has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more....

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(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a), (c) and (d).

As consultant to the Hispanic Legislative Caucus, you are a public official. (Section 82048.) You have an investment interest and a position of management in XECORP, and you receive income from XECORP. We assume that your investment in XECORP is worth \$1,000 or more and that you have received at least \$250 in income from XECORP during the past 12 months. Accordingly, you are required to disqualify yourself from participating in any decision as a consultant to the Hispanic Legislative Caucus which will foreseeably and materially affect XECORP in a manner different than it will affect the public generally.

In addition, because you and your husband are the sole owners of XECORP, clients of XECORP are considered sources of income to you. (Section 82030(a).) If a client has paid or promised to pay XECORP \$250 or more during the preceding 12 months, that client is a source of \$250 or more in income to you for purposes of Section 87103(c). Accordingly, you also are required to disqualify yourself from participating in any decision as consultant to the Hispanic Legislative Caucus if the decision would foreseeably and materially affect that client in a manner different than it would affect the public generally.

Because you have not provided information concerning any specific decision pending before the Hispanic Legislative Caucus, we can provide you with only the following general guidance concerning disqualification. If you have more specific questions in the future, you may contact the Commission's legal division at (916) 322-5901 for further advice.

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Foreseeability

The effect of a decision is "reasonably foreseeable" if there is a substantial likelihood that it will occur. Certainty is not required; however, an effect that is but a mere possibility is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Materiality

The Commission has adopted regulations which contain monetary and other guidelines for determining whether the reasonably foreseeable effect of a decision is considered material. These regulations differ based on the type of economic interest involved. For example, XECORP is a for-profit corporation that is not publicly traded; therefore, Regulation 18702.2(g) (copy enclosed) generally would apply for determining whether an effect on XECORP is material. Regulation 18702(b)(3)(D) (copy enclosed) generally would apply for determining whether an effect on a nonprofit client or individual client of XECORP is considered material.^{3/}

Public Generally

Finally, even if a decision will foreseeably and materially affect XECORP or one of XECORP's clients, you may participate in that decision if it will affect the public generally in substantially the same manner. The Commission has determined that the "general public" consists of the residents and businesses in the jurisdiction of an official's agency. As an official of the State Assembly, the jurisdiction of your agency is the State of California. Accordingly, the "public generally" exception applies to any decision which affects a significant segment of the state in substantially the same manner as it affects XECORP or XECORP's client. For example, you may participate in a decision concerning legislation which affects all elected officials or all nonprofit corporations in substantially the same manner, even though that decision also

^{3/} The Commission recently approved adoption of new regulations concerning material financial effect. We anticipate that the new regulations will take effect sometime in October. A copy of the new regulations is enclosed. Of particular importance to your situation are Regulations 18702.5 and 18702.6, which concern effects on nonprofit sources of income and individual sources of income.

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would materially affect an elected official or nonprofit corporation who is a client of XECORP.

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan *by DMG*

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh

Enclosures



X E C O R P

399 Haas Avenue
San Leandro, CA
94577
415 635-0615

REBECCA A. NIETO
Chief Executive Officer

HENRY M. MESTRE JR.
Chief Financial Officer

July 1, 1988

Ms. Diane Griffith
General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Ms. Griffith:

I have been asked to serve as consultant to the Hispanic Legislative Caucus. As Caucus consultant, I would be a part-time employee of the State Assembly. I also would continue, on a part-time basis, my occupation as CEO of XECORP. I request advice pursuant to Government Code Section 83114 as to whether I have potential conflicts of interest under Government Code Section 87100

XECORP

XECORP is a business enterprise owned by myself and my husband. XECORP has a number of elected officials and non-profit corporations as its clients. A list of XECORP's clients is attached. XECORP performs the following services for its clients:

1. Grant writing for non-profit corporations attempting to obtain grants from private foundations.
2. Counseling non-profit clients on how to raise money from individual donors.
3. Assisting in the organization of non-profit corporations.
4. Political fundraising for elected officials.

XECORP does not engage in any lobbying for its clients, and has not done any fundraising from individual donors for any of its non-profit clients.

Some of XECORP's clients do have some state or local government funding. However, XECORP has not assisted any client in applying for funding from any state agency and has assisted only one client in obtaining funding from a local government agency (City of San Jose, Community Development Department), i.e. Community Development Block Grant money (Federal dollars administered by cities for re-development) and it has been nine months since that business agreement ended. At least one of XECORP's clients has considered setting up a lobbying committee; XECORP has not had any involvement with that committee.

Consultant To The Hispanic Caucus

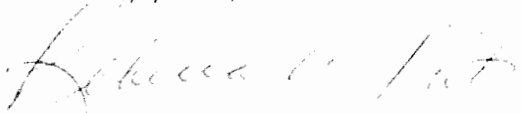
As consultant to the Caucus, I would do the following:

1. Organize an advisory group of Hispanic organizations throughout the state. The purpose of the advisory board would be to encourage Hispanic organizations to work together for common legislative goals; to identify issues that the advisory group would like to see the Hispanic Caucus address through legislation; to inform members of the advisory group of the activities of the Legislature on issues of interest to Hispanics; and to inform members of the Caucus of the concerns of the advisory group. I would also arrange meetings between the advisory group and the Caucus.
2. Assist the Caucus if the Members decide to organize a non-profit corporation, independent from the Legislature, which could receive contributions from private sources, and could engage in activities of interest to Hispanics, such as sponsoring an intern program for Hispanics to work in the Legislature, or developing community education and awareness programs for Hispanics. The non-profit would not contribute to, support or oppose any candidate, or engage in any other political activity.
3. Administrative work for the Caucus; answering letters and telephone inquiries; keeping track of legislation affecting Hispanics; obtaining information requested by Caucus members relating to legislation; assisting Caucus members with legislation when requested to do so by the Caucus.
4. Liaison between the Caucus members and the Hispanic community. This will consist of setting up meetings between the Caucus and Hispanic groups, meeting with Hispanic groups throughout the State, informing Hispanics of the activities of the Caucus, informing Hispanics about legislative issues of interest to Hispanics, reporting on the concerns of Hispanic groups to the Caucus, and providing education and information to Hispanic groups that are interested in, or support or oppose, legislation affecting Hispanics.

I would like to know if there is the potential for a conflict of interest between my job as consultant to the Caucus and my position, or my husband's position, with XECORP. If there is, I intend to take every possible precaution to avoid such a conflict.

If you have any other questions, either about the Caucus position or about XECORP, I will be happy to provide you with additional information. I would appreciate a response as soon as possible, since I am starting as Caucus Consultant on July 1, 1988.

Sincerely yours,


Rebecca A. Nieto

XECORP

Client List

Allen Temple Development Corporation *

Oakland

Organizational Development and
Fund Raising

Asian Foundation For Community Development *

Oakland

Organizational Development and
Fund Raising

Assemblyman Peter Chacon *

San Diego

Fund Raising

Assemblyman Johan Klehs

San Leandro

Fund Raising

**California Association for Community
Economic Development ***

Berkeley

Organizational Development and
Fund Raising

California Human Development Corporation

Santa Rosa

Project Development

• **City of San Jose, Councilwoman Blanca Alvarado**

San Jose

Staff Retreat Facilitation

Growth Opportunities, Incorporated

Oakland

Organizational Development and
Fund Raising

**Mexican American Community
Services Corporation**

San Jose

Fund Raising and Real Estate
Development

**National Congress for Community
Economic Development**

Washington, DC

Organizational Development

North Peninsula Neighborhood Services Center

South San Francisco

Organizational Analysis

Oregon Council for Hispanic Advancement

Portland, Oregon

Staff Retreat Facilitation

Port of Oakland *

Oakland

Organizational Development

Redwood Community Action Agency *

Eureka

Management Training and
Technical Assistance for Rural
Non-Profit organizations.
Project is funded by State DEO
(CSBG Funds)

San Jose Development Corporation

San Jose

Organizational Development and
Fundraising

* Current Contracts

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General Counsel
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HENRY M. MESTRE JR.
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Consultant To The Hispanic Caucus

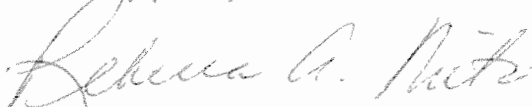
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Sincerely yours,

A handwritten signature in cursive script, reading "Rebecca A. Nieto".

Rebecca A. Nieto

XECORP

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San Jose

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* Current Contracts



California Fair Political Practices Commission

July 6, 1988

Rebecca A. Nieto
Chief Executive Officer
XECORP
399 Haas Avenue
San Leandro, CA 94577

Re: 88-252

Dear Ms. Nieto:

Your letter requesting advice under the Political Reform Act was received on July 5, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh